



Comptroller General
of the United States

Washington, D.C. 20548

Mr. Maeder

Decision

Matter of: Gamma Microwave, Inc.

File: B-236598

Date: December 18, 1989

DIGEST

Protest that contracting agency did not obtain full and open competition because protester did not receive its copy of solicitation until 1 day before bid opening and agency refused to extend bid opening date or to accept a "FAX" bid, is denied where agency made diligent, good-faith efforts to publicize and distribute the solicitation, which contained classified material, consistent with security clearance requirements, and obtained two bids at prices which have not been shown to be unreasonable.

DECISION

Gamma Microwave, Inc. (Gamma), protests any award of a contract under invitation for bids (IFB) No. DAAB07-89-B-0274, issued by the Communications Electronics Command (CECOM), Department of the Army, Fort Monmouth, New Jersey, for waveguide loads, a component of a radar system. Gamma asserts that the requirement should be recompeted because the firm did not receive a copy of the solicitation until 1 day before the bid opening date and because in response to the protester's request made, at that time, the contracting officer refused to extend the bid opening date or to accept a telexed or "FAXed" bid.

We deny the protest.

The requirement, for a quantity of 80 waveguide loads with a 100 percent option, was synopsisized in the Commerce Business Daily (CBD) on February 23, 1989. The synopsis advised potential bidders that they must "possess the lowest facility clearance of confidential." This was required because the solicitation package contained classified drawings. The solicitation was issued on July 11 and set bid opening for August 11. Notices of the solicitation also

047318/140231

were posted in the agency's bid room. Two bids, determined by the contracting officer to be responsive and reasonably priced, were received.

When CECOM initially issued the solicitation on July 11, it sent it to 23 prospective bidders who possessed appropriate clearances. The contracting officer states that other contractors were considered for the initial issuance of the solicitation but were not mailed bid packages if they failed to pass the required security check. These contractors were sent letters on June 30--11 days prior to the actual issuance of the solicitation--informing them that they would not be sent a copy of the solicitation because they did not have the appropriate clearance. One firm sent such a letter was a division of the Varian Corporation, the original designer and manufacturer of the part being purchased. Unknown to the contracting officer, Gamma had purchased this operation from Varian on March 31, 3 months before. There is no indication that the contracting agency was aware that Gamma itself was a potential source.

Gamma states that it requested the IFB package by a facsimile or "FAX" transmittal sent to the contracting officer on Friday, July 21, which the Army states was received in the contracting activity on Monday, July 24, almost 2 weeks after the solicitation was issued. Because the package contained classified drawings, however, CECOM had to check Gamma's security clearance before it could send Gamma the solicitation. The contracting officer requested that a review of Gamma's security clearance be made and that he be advised of the result "as soon as possible" in view of the bid opening date. Verification of Gamma's clearance was received Friday, August 4, and the package was sent by certified mail on Monday, August 7. Gamma states that it did not receive the IFB package until August 10, the day before bid opening, which was scheduled for 2 p.m. Gamma alleges that it called the contracting officer on the morning of August 11 and, during a series of telephone conversations, requested that the contracting officer postpone the date for the receipt of bids. When the contracting officer refused to extend the bid opening date, Gamma asked that it be allowed to telex or "FAX" its bid. The contracting officer refused the second request and this protest followed.

Gamma argues that although the solicitation was distributed to other bidders on July 11, it was "withheld" from Gamma until the day before the August 11 bid opening, making it a practical impossibility for Gamma to submit a bid in the absence of an extension of the opening date or permission to use telex or facsimile transmission. As a result, the

protester contends, the contracting agency failed to obtain the full and open competition required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2301 (1988), as evidenced by the receipt of only two bids which the protester asserts were not reasonably priced.

Because CICA makes full and open competition the standard for conducting government procurements, we give careful scrutiny to an allegation that potential bidders have not been provided an opportunity to compete for a particular contract. Transwestern Helicopters, Inc., B-235187, July 28, 1989, 89-2 CPD ¶ 95. In so doing, we will consider that the agency has met its obligation if it can show that the agency made a diligent, good-faith effort to comply with the statutory and regulatory requirements regarding notice and distribution of solicitation materials, and it obtains reasonable prices. Id.

We find that the agency's efforts to obtain competition here, and the competition actually generated, satisfied the full and open competition standard. First, CECOM did synopsized this procurement in the CBD well in advance of when the solicitation was actually distributed. Second, it did check the security clearances of and mailed copies of the IFB to 23 potential bidders. Third, it posted a notice of the solicitation in the agency's bid room. Although Gamma argues that the two bids received do not constitute adequate competition, we have held that where, as here, the agency has complied with all statutory and regulatory requirements in soliciting offers, the receipt of two bids, does constitute adequate competition. See Shemya Constructors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108. Gamma suggests, in general terms, that the prices received may be unreasonable, but review of the record does not establish this fact. In this regard, we note that the solicitation's "Price History" clause informed potential bidders that in 1986 and 1987, respectively, the government had paid unit prices of about \$5,700 and \$4,500 for small quantities of this item. The prices received under the present solicitation for a larger quantity ranged from less than one-third to approximately half of the 1986 and 1987 prices.

We do not think the record supports the conclusion that the contracting agency arbitrarily "withheld" Gamma's copy of the solicitation at the same time it was being distributed to other bidders. First, as we noted above, this procurement was synopsized in the CBD. In its comments to the agency report, Gamma acknowledges that it had no interest in the procurement at the time it was synopsized because Gamma

did not acquire from Varion the division which manufactures this item until one-and-a-half months later.

Nevertheless, it is clear that this manufacturing facility was considered by the Army as a potential source for the item because on June 30, before the IFB was issued, the Army sent that facility a letter advising that it would not be sent a copy of the solicitation because the company did not have the appropriate clearance to receive the classified material. Gamma does not deny that this letter was received. Despite this advice, which was sent before the IFB was issued, Gamma did not request a copy of the solicitation until almost 2 weeks after it was issued. The protester has offered no explanation of this delay.

Under the circumstances, we think the protester's failure to receive the IFB earlier primarily is attributable to the fact that the protester did not request a copy of a solicitation containing classified material until midway through the bidding period, and not because the contracting agency discriminated against the protester or was dilatory in obtaining verification of the protester's security clearance.

Gamma's argument that it was an abuse of discretion for the contracting officer to not extend the time for bid opening is also unpersuasive. The CICA standard of full and open competition does require an agency to take reasonable steps to ensure that a procurement is open to all responsible sources. In reviewing allegations that a particular contractor has not been provided an opportunity to compete for a particular contract, we take into account all of the circumstances surrounding the contractor's failure to earlier receive the solicitation as well as the agency's explanation. Webb Elec. Co. of Florida, Inc., B-223980, Dec. 19, 1986, 86-2 CPD ¶ 684.

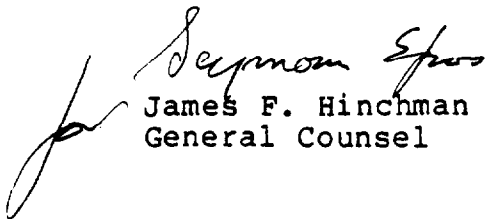
Certainly it is within a contracting officer's discretion to extend the bid opening date, in response to a last-minute request, where he realizes that only one bid has been received and that the requester's failure to receive the solicitation until the morning of the day of bid opening was the fault of the contracting agency in not responding to repeated requests by the firm for a copy of the solicitation. Combustion Equip. Co., Inc., B-228291, Dec. 24, 1987, 87-2 CPD ¶ 627. On the other hand, there may be circumstances where it is also within the contracting officer's discretion to refuse such a request. For example, we did not find legally objectionable a contracting officer's failure to extend bid opening in order to respond to a last-minute request for clarification from a bidder familiar with

the circumstances of the procurement because of its relationship to the incumbent contractor. T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435.

Here, we think it was the protester's late request for a copy of the solicitation which resulted in its receipt on the day before bid opening, and not inattention by the contracting agency to the request once received. Under these circumstances, and in view of the fact that two bids were received at prices which have not been shown to be unreasonable, we do not think it was an abuse of discretion for the contracting officer not to have extended the time for bid opening.

Finally, Gamma alleges that the agency abused its discretion in not accepting a "FAXed" or telegraphic bid. We note that, as a general rule, telegraphic bids may not be considered by a procuring agency unless they are explicitly authorized by the solicitation. A & S Taub, B-226270, June 1, 1987, 87-1 CPD ¶ 554. In this instance, the use of telegraphic bids was not authorized by the solicitation.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel